

A New Castle City Board of Adjustment Hearing took place on July 15, 2008 at 7 p.m. in the City of New Castle's Town Hall.

Members Present: Mayor John F. Klingmeyer  
David Athey, City Engineer  
Roger Akin, City Solicitor

The meeting was called to order at 7 p.m. by Mayor Klingmeyer. Roll call was taken. The Mayor read the Notice of Public Hearing that states, "An application has been filed by Matthew M. White, 202 Baldt Avenue, New Castle, for variances from the zoning code to permit the construction of a 104 square foot rear addition for a stairwell and landing and to allow total additional living space of 920 square feet on the second floor of the existing residence (1) reducing the front yard setback to 10.5 feet from the required 30 feet, (2) reducing the northeasterly side yard setback to 4.9 feet from the required 8 feet, (3) reducing the garage side yard setback to 3.3 feet from the required 8 feet, (4) reducing the minimum total side yard setback to 15.4 feet from the required 20 feet, and (5) decreasing the total lot size requirement from 7,500 square feet to 5,600 square feet, on property located at 202 Baldt Avenue, New Castle, Delaware, known as tax parcel number 2100700168.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Tuesday, July 15, 2008, at 7 p.m. in Old Town Hall, 2<sup>nd</sup> Floor, located at 2<sup>nd</sup> and Delaware Street, New Castle, Delaware."

The Mayor informed that affidavits of publication appeared in the News Journal on 6/25/08 and the New Castle Weekly dated 7/2/08. Building Inspector Jeff Bergstrom confirmed that the property had been properly posted.

Mr. Matthew White (sworn in by Mayor) read a letter he penned to the Board providing details of his application, which involves bringing a non-conforming structure into compliance with the City's zoning law. This is an R1 zoning district.

Mr. Akin said the stated setback variations pre-existed adoption of the modern zoning code and Mr. White is seeking approval of certain variances should he at some point decide to sell the home. Approval by this Board would make sale ability easier.

The applicant requests being able to renovate a home that is on the lot on which it has been built. The lot has not been changed or subdivided; the setbacks are pre-existing. The only new construction being proposed is an alteration of a staircase at the rear of the home. This would create a slight bump out of the existing wall on the east wall.

Using a diagram of the property and proposed alteration Mr. White addressed concerns of the Board.

The Mayor informed Mr. White that he is covered by law and approval of these variances is not necessary. He is a legally non-conforming use and can exist at the location and also sell it. The applicant is not seeking to expand the property.

Mr. Bergstrom informed that a variance to increase the floor area to rebuild the second floor and stairwell in the rear of the property.

Mr. Akin informed that 230-9(a) of the Code makes it necessary for the applicant to appear before this Board. If you choose to sell the property in the future setback violations would arise, but an attorney would determine that this is a pre-existing non-conforming structure and all of these setbacks are permitted because the house preceded the modern zoning code. This Board may grant enlargement of a non-conforming structure as long as a bulk violation is not increased and this home does not currently exceed that. The additional volume that will constitute the new staircase structure does not put the home over the maximum bulk regulations in the Code.

Discussion followed about the garage and what is required should it be expanded in the future. It was established that Mr. White would need to apply for another variance if he wants to expand the structure.

Mr. Bergstrom stated that part of the reason that he agrees with the applicant's request for the variances are is because our law is unclear as to what the Board needs to do to grant such a variance. The only way is to bless the existing setbacks on the property then permit the alteration to the structure.

*(Discussion about certain sections of the Code concerning variances/structural alterations took place.)*

No comments from the audience.

**Applying the factors under Section 230-57.C1A of the Zoning Code, Mr. Akin made a motion to approve the applicant's variance request to increase bulk to the structure since the setback violations have been grandfathered because the structure was built prior to the modern zoning code. *(Mr. Akin's rationale follows. The applicant has described the difficulties he has encountered moving bulky items from floor to floor because of the age of the staircase that wasn't large enough. This makes it a special circumstance that is peculiar to this structure. It may not be applicable to other structures in the same district. Granting the right to enlarge the structure would not give the applicant any special privilege that is denied to others. Other properties in the vicinity of the applicant's home have made additions to their properties to make them more usable.)* The Board does hereby reaffirm that setback non-conformity violations are permitted under the City's zoning code.**

Mr. Athey suggested amending the motion to insert the language 'to approve the construction of the stairwell as shown on the plan' and striking the word 'variance'. Mr. Akin accepted the amendment. **A motion was made and seconded to approve the amendment. The amendment was approved by unanimous vote.**

**The main motion as amended was seconded and approved by unanimous vote.**

**(Amended Motion -- A motion was made to approve the applicant's request to approve the construction of the stairwell as shown on the plan. The Board does hereby reaffirm that setback non-conformity violations are permitted under the City's zoning code.)**

Adjournment

The meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Debbie Turner  
Stenographer